HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.573 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioners having got aggrieved by order and decree, dated 29-11-2004, in M.V.O.P. No.94 of 2003, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Kurnool at Nandyal (for short 'the Tribunal') on the ground that meager compensation of Rs.2,71,200/-(Rupees two lakhs seventy one thousand and two hundred only) was granted as against the claim for Rs.7,00,000/-(Rupees seven lakhs only) laid under Section 166(c) of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellants herein are petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of bus bearing registration No.AP 04/T 9598, are respondent Nos.1 and 2, respectively, and respondent No.3 – Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), which took the bus on hire, is respondent No.3.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. Coming to the facts, on 20-10-2002 at 10.30 A.M., one J.C. Veeraiah, husband of the 1st petitioner and father of the 2nd and 3rd petitioners, along with his wife – petitioner No.1, was proceeding to their house from a Cool Drink Shop at Bommala Satram and when they reached the place of accident, bus bearing

registration No.AP 04/T 9598 belonging to the 1st respondent and hired by the 3rd respondent – APSRTC driven by its driver in a rash and negligent manner came from behind and hit him, due to which, J.C. Veeraiah sustained injuries. Immediately, he was shifted to Government Hospital, Nandyal, where J.C. Veeraiah, who is hereinafter referred to as 'deceased' was declared dead by the Medical Officer. The petitioners claimed that the deceased was 42 years old on the date of accident, working as Operator in M/s Espi Plastic Pipes Industries, Nandyal, drawing salary of Rs.5,100/- per month. In addition to the above, the deceased was also getting Rs.400/- to Rs.500/- per month by doing overtime work; Rs.400/- towards conveyance charges and Rs.1000/- towards accommodation charges and, therefore, sought to grant Rs.7,00,000/-.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the vehicle, filed counter opposing the claim, stating that the 3rd respondent alone is liable to pay compensation. While contending that the compensation claimed by the petitioners is excessive and exorbitant, sought to dismiss the claim.

7. The 3rd respondent – APSRTC filed separate counter opposing the claim, attributing negligence to the deceased and disowning its liability, and finally, requested the Tribunal to fasten liability on respondent Nos.1 and 2 alone.

8. The Tribunal framed three issues basing on the above

pleadings. During inquiry, on behalf of the petitioners, the 1st petitioner examined herself as PW.1 and also examined PWs.2 and 3, who are eye-witness to the occurrence and co-employee of the deceased and the Finance Manager of the deceased employer, respectively, and Exs.A-1 to A-7 were marked and also got marked Exs.X-1 to X-3 as to their entitlement for compensation. On behalf of the respondents, none was examined, but copy of insurance policy was marked as Ex.B-1.

9. The Tribunal found issue No.1 in favour of the petitioners. On issue No.2, the Tribunal though, at one stage, observed that Exs.A-2 and A-5 would reflect the age of deceased as 42 years, but, somehow, fixed the age of the deceased as 46 years, since there was no other proof showing the correct age of deceased, and worked out the compensation by taking the basic pay at Rs.1600/- plus Rs.700/- towards incentives and, thus, arrived at Rs.2,300/- as the monthly earnings and Rs.27,600/- as the annual income. The Tribunal by applying multiplier '13' for the actual loss of income, worked out Rs.18,400/- per annum having deducted 1/3rd from Rs.27,600/- and arrived at Rs.2,71,200/- towards loss of dependency. Aggrieved of the same, the instant appeal is preferred, agitating certain grounds as mentioned in the grounds of appeal. One of the main grounds is that the Tribunal ought not to have taken the age of deceased as 46 years when there is no documentary evidence to show that he was 46 years old. The other grounds relate to deprival of amounts towards loss of estate and loss of consortium.

10. Heard Sri K. Rathangapani Reddy, learned counsel for the petitioners – appellants, and Sri V. Srinivasa Rao, learned

Standing Counsel for the 2nd respondent – Insurance Company. Though, notices were effected on respondent Nos.1 and 3, none appeared on their behalf.

11. At the outset, it is to be observed that the petitioners though, summoned PW.3 and got marked Exs.X-1 to X-3, which are muster roll in serial No.2 and relevant entries in Payment Register and allotment of quarters, respectively, still, the petitioners have not chosen to file any document to show the exact age of deceased, despite the deceased being an employee of M/s ESPI Plastic Pipes Industries, Nandyal. That apart, the petitioners have not chosen to get the appointment order or the service register maintained by the employer of the deceased showing the exact age of the deceased and marked and that, that has been the reason why, the Tribunal fixed the age of deceased as 46 years as against the entries made in Exs.A2 and A-5, which are inquest report and postmortem examination report respectively. It is not as though, that the petitioners were precluded from filing the certificates in proof of age of the deceased, but, still, they have not chosen to file and not chosen to get the documents summoned from the company to show the exact age of the deceased as on the date of accident. Since the exact age of the deceased is required to be placed before the Tribunal in determining the just and reasonable compensation and to view the future prospects, the instant appeal deserves to be remitted to the Tribunal affording an opportunity to the petitioners for leading further evidence to ascertain correct age of the deceased as on the date of accident.

12. In that view of the matter, the order and decree, dated 29-11-2004, in M.V.O.P. No.94 of 2003, passed by the Tribunal is

set aside remitting the matter to the Tribunal. The Tribunal is directed to dispose of the matter, as expeditiously as possible, preferably within a period of six (06) months from the date of receipt of a copy of this judgment by affording an opportunity to both sides for leading further evidence, if any, or to recall and examine the witnesses already examined to ascertain the correct age of deceased as well as permissible deductions to be made on the salary of deceased in arriving at the monthly earnings in determining the just and reasonable compensation. However, it is needless to mention that the Tribunal shall dispose of the matter on merits uninfluenced by the observations, if any, made by this Court.

13. With the above observations, the appeal is allowed. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

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A. SHANKAR NARAYANA, J

February 11, 2015.

Note:
Furnish C.C. of the judgment within one week.
(B/o)
Mgr